



City of Columbus
Mayor Gregory S. Lashutka

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October 29, 1997

William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

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MAIL ROOM

Dear Mr. Caton:

RE: In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities
MM Docket No. 97-182
Comments of the City of Columbus, Ohio

On behalf of the City of Columbus, Ohio, I am hereby filing the following comments in the proceeding described above. I have enclosed nine (9) copies of the City's comments. Please file our comments in this proceeding and distribute copies to all members of the Commission.

In its Fifth Report and Order in the digital television (DTV) proceeding (MM Docket No. 87-268, FCC 97-116), this Commission adopted an ambitious schedule for construction of DTV facilities. Under the construction schedule set forth in the Fifth Report and Order, affiliates of the top four networks in the top 10 markets are required to be on the air with digital signals by May 1, 1999. Affiliates of the top four networks in markets 11-30 must be on the air with digital signals by November 1, 1999. All other commercial stations are required to begin providing digital signals by May 1, 2002.

The instant proceeding was initiated by a petition filed by the National Association of Broadcasters (NAB) and the Association for Maximum Service Television (AMST). Ostensibly due to concerns about meeting the DTV facility construction deadlines established by this Commission, NAB and AMST (the Petitioners) have asked the Commission to adopt a rule that would permit the Commission to preempt state and local zoning and other land use regulations to the extent these regulations "unreasonably" prohibit or delay the construction of DTV facilities. The Petitioners ask the Commission to impose specific time limits for state and local government bodies to respond to requests for approval of the placement, construction or modification of broadcast transmission facilities. Under the Petitioners' proposed rule, if state and

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local government bodies do not act on these requests within the time limits, the requests would be deemed granted. The Petitioner's proposed rule also effectively prevents local authorities from even considering certain types of restrictions on the siting and construction of transmission facilities. The Commission is treating the petition filed by NAB and AMST as a petition seeking the institution of a new rulemaking proceeding.

The City of Columbus urges the Commission to reject the NAB/AMST petition and the rule proposed therein. The rule proposed by the Petitioners is based largely on provisions of the Telecommunications Act of 1996 pertaining to placement of personal wireless service facilities. The soundness of basing a rule regarding construction of broadcast facilities on a statute dealing with the placement of personal wireless service facilities is highly questionable. DTV facilities are very different from personal wireless service facilities. For example, while personal wireless facilities are fairly inconspicuous, DTV antennae may rival skyscrapers in height. Also, while personal wireless facilities would be dispersed within a community, DTV facilities will be highly concentrated. The factors supporting Congress' decision with regard to placement of personal wireless facilities simply do not attain in the context of DTV facilities.

The City of Columbus contends that a far better approach for the Commission to follow is the approach proposed by the FCC Local and State Government Advisory Committee (LSGAC). In its Advisory Recommendation Number 3, LSGAC proposes that the Commission reject the rule proposed by the Petitioners and instead participate in discussions which LSGAC has started with representatives of NAB. Another alternative suggested by LSGAC is that rather than issuing a Notice of Proposed Rulemaking, this Commission could issue a Notice of Inquiry to begin a dialogue on issues surrounding construction of DTV facilities.

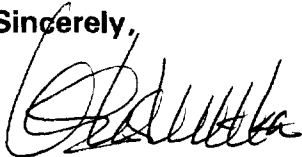
Participation by this Commission in discussions between LSGAC and representatives of NAB or else an Inquiry conducted by this Commission would be more likely to result in sound policy on placement of DTV facilities. The NAB/AMST petition which started this proceeding is premised on assumptions that state and local land use regulations are inherently unreasonable and that local authorities will apply these regulations in a dilatory fashion. Other than the anecdotes presented by the Petitioners, there is no support for such a conclusion. The current proceeding also places state and local governments in the awkward position of having to prove a negative; i.e., that state and local land use regulations will *not* unreasonably delay the construction of DTV facilities. Commission participation in discussions between LSGAC and representatives of NAB or a Commission Inquiry will allow a more thorough exploration and development of the factual support, if any, for the Petitioners' assumption that existing state and local land use regulations are unreasonable.

Discussions between LSGAC and NAB or an Inquiry by this Commission will also facilitate exploration of self-help mechanisms which are available to broadcasters to help speed construction of DTV facilities. Right now, there is no indication whether broadcasters are exploring or have even considered these mechanisms. For example, have broadcasters located and started to consult with contractors capable of constructing DTV facilities? Have broadcasters started the process of locating potential sites for construction of DTV facilities? Have broadcasters started discussions with local zoning officials to explore ways to expedite requests for construction of DTV facilities? These self-help remedies can be effectively explored in discussions between LSGAC and NAB or in an Inquiry conducted by this Commission.

There is also a need to explore the time limits proposed by the Petitioners for state and local government bodies to respond to requests for approval of the placement, construction or modification of broadcast transmission facilities. As they currently stand, these proposed time limits appear unworkable for local government authorities. Discussions between LSGAC and NAB or an Inquiry by this Commission would allow exploration of the basis for the time limits proposed by the Petitioners and, if necessary, development of more realistic time limits.

The City of Columbus urges this Commission to reject the NAB/AMST petition and the proposed rule set forth in that petition. Other mechanisms exist to address the concerns of broadcasters while preserving the rights of states and localities to protect the legitimate interests of their citizens.

Sincerely,



Gregory S. Lashutka
Mayor

Cc: Hon. John H. Glenn
Hon. Mike DeWine
Hon. John R. Kasich
Hon. Deborah Pryce
Hon. David L. Hobson